

Ram Das and Others Vs. Munna Lal and Others

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Court : Allahabad

Decided On : Jan-28-2011

Judge : Arun Tandon, J.

Appeal No. : Civil Misc. Writ Petition No. 26659 Of 1994

Appellant : Ram Das and Others

Respondent : Munna Lal and Others

Judgement :

1. Heard Sri S.K. Verma, learned Senior Advocate, assisted by Sri Vipin Lal Srivastava, on behalf of the petitioners, Sri W.H. Khan, learned Senior Advocate assisted by Sri J.H. Khan, Advocate on behalf of respondent no. 3 and learned Standing Counsel for the State respondents.

2. Petitioners before this Court seek quashing of the order passed by the Additional District Judge dated 14.05.1994 in M.A. Case No. 24 of 1992 on an appeal filed against an order of the Forest Settlement Officer, Chopan, District-Sonebhadra date 08.10.1991.

3. Facts in short giving rise to the present writ petition are as follows:

4. Various plots of land, as mentioned in paragraph 1 of the writ petition, situate in village Mahuaon Kala, Pargana Agori, Tehsil Rabartsganj, District Sonebhadra were subject matter of notification under Section 4 of the Indian Forest Act, 1927

(hereinafter referred to as 'Act, 1927'). Objections were filed in response to the notification by the petitioners as well as by respondent nos. 1 to 3. Both of whom claimed that the property was their Bhumidhari and it was not a forest. The Forest Settlement Officer, after hearing the parties, vide order dated 08.10.1991 held that the plots in question were liable to be excluded from the notification under Section 4 of the Indian Forest Act. Against the order of the Forest Settlement Officer appeals were filed before the District Judge. The dispute giving rise to the present writ petition is with reference to Appeal No. 24 of 1992 only.

5. It may be recorded that the appeal was filed in accordance with the judgment of the Hon'ble Supreme Court in the case of Banwasi Seva Ashram v. State of U.P. and others, reported in AIR 1987 SC 374 and the District Judge was required to exercise the power of Appellate Authority as provided under Section 17 of the Act, 1927. The District Judge dismissed the appeals of respondent nos. 1 to 3 and held the petitioners to be the Bhumidhar of the plots, however, he maintained that the land has rightly been excluded from notification under Section 4. Opposite parties no. 1 to 3, not being satisfied with the order, filed a review application. This review application has been allowed vide order dated 12.05.1994 and under the impugned order the respondent nos. 1 to 3 have been declared to be the Bhumidhari of the plots in question. Hence this petition.

6. Interesting legal issue has arisen in the present petition, namely as to whether the Forest Settlement Officer in exercise of powers under Section 11 of the Act, 1927 and for that purpose the Additional District Judge, while exercising power as the Appellate Authority, can adjudicate upon the claim of the rival parties qua the title over the plots, which have been directed to be excluded from notification under Section 4.

7. On behalf of the petitioners it is contended that review being creature of Statute and there being no inherent power of review, the Additional District Judge, while exercising power under Section 17 of the Act, 1927 had no such power of review, as only a revision before the State Government under Section 18 of the Act, 1927 could be filed. There is no power of review under the Act, 1927. Reference- Full Bench Judgment of the High Court in the case of Smt. Shivraji and others v. Dy.

Director of Consolidation, Allahabad and others, reported in 1997 (88) RD page 562 (Para-20).

8. Even on merit it is contended that in the facts of the case the power of review is only for the purposes of correcting errors apparent on the face of the record. Such power cannot be exercised so as to flash out and search mistakes in the earlier order. Reference- Lily Thomas, etc. etc. v. Union of India and others; AIR 2000 SC 1650. It is, therefore, contended that the earlier order passed by the Additional District Judge holding the petitioner as Bhumidhar could not have been reviewed and the impugned order is patently illegal.

9. Counsel for the respondent in reply contends that once the plot of land has been declared to be excluded from notification under Section 4 none of the provisions of the Act, 1927 would be applicable, as such land ceases to be the forest land. Neither the Forest Settlement Officer nor the Appellate Authority under Section 17 of the Act, 1927 can adjudicate upon the rival dispute of title over the said plots. The course open for decision of inter se dispute of title between two private parties, claiming a right over the land, would either be by way of suit under Section 229-B of the U.P.Z.A. & L.R. Act or by way of regular civil suit, as the case may be. For the proposition reference is made to the judgment of the Hon'ble Supreme Court in the case of Mahendra Lal Jaini v. State of U.P.; AIR 1963 SC 1019 (Para-29), wherein it has been held as follows:

"As we have already pointed out section 4 and 11 give power for determination of all rights subordinate to those of a proprietor, and as the right of the Bhumidhar is that of tenure holder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a Bhumidhari. This in addition to the provisions of section 229B of the Abolition Act."

10. From the aforesaid it is apparently clear that the Forest Settlement Officer has a right to decide the inter se dispute qua Bhumidari rights between the State and a

private person, inasmuch as without deciding the same no land can be excluded from notification under Section 4.

11. He further clarifies that Section 331 of the U.P.Z.A. & L.R. Act does not exclude the jurisdiction of any other authority or court under some special enactment for trying an issue of title in respect of agricultural land. He further submits that the Forest Settlement Officer having found that the petitioner was Bhumidhari of the property in question, the finding recorded up to the appellate stage would be binding upon the parties and in the alternative even if it is held that such issue cannot be decided directly in respect of the land which is excluded from the notification under Section 4, then such issue of title has to be incidentally decided, which can always be subject to the orders to be passed in declaratory suit under Section 229B of the U.P.Z.A. & L.R. Act.

12. It is further contended that the Additional District Judge has ample power to review, as has been upheld by a Division Bench of this Court in the case of Smt. Pyari Devi v. State of U.P. and others; 2003(5) AWC 3945.

13. For appreciating the controversy raised between the parties it would be worthwhile to reproduce Sections 4(1), 5, 6, 7, 11(2)(i) of the Act, 1927 as well as Section 17 as applicable in the State of U.P., which read as follows:

"4. Notification by State Government.-(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette-

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called "the Forest Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or

over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter."

5. Bar of accrual of forest-rights.- After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

6. Proclamation by Forest Settlement-officer.- When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation-

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. Inquiry by Forest Settlement-officer.- The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly

preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

11(2)(i). Power to acquire land over which right is claimed.-(1).....

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either-

(i) exclude such land from the limit of the proposed forest; or

(ii).....

(iii).....

17. Appeal from order passed under Section 11, Section 12, Section 15 or Section 16.- Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under Section 11, Section 12, Section 15 or Section 16, present an appeal from such order to the District Judge."

14. From reading of the aforesaid provisions, it shall be seen that the issue raised by private person like the petitioners and respondents, for the disputed plots being excluded from the forest area, could be adjudicated under Section 11(2)(2) of the Act. The issue so raised stood decided in their favour under order of the Forest Settlement Officer referable to his power under Section 11(2)(i). On such orders being passed under Section 11(2)(i) there cannot be no claim in respect of the said plots under Section 6(c) of the Act, 1927. What logically follows therefrom is that no appeal can be filed by a person in respect of a plot which has been excluded from the notification under Section 4 in respect of any claim of such right and the amount and particulars of compensation if any in respect thereof under

Section 6(c) of the Act, 1927.

15. It may be clarified that an appeal in respect of the claim under Section 6(c) of the Act, 1927 can only be in respect of plots of land which are not excluded from the notification under Section 4 in exercise of powers under Section 11(2)(i) (2) of the Act and on rejection of such claims only that an appeal under Section 17 of the Act, 1927 is contemplated.

16. I am of the considered opinion that since there is an inter se dispute of title between two private persons over a plot of land, qua which an order under Section 11(2)(i) (2) has been passed by the Forest Settlement Officer, there can be no adjudication of title dispute on an appeal under Section 17 of the Act, 1927.

17. The parties have to be relegated to the remedy available under the U.P.Z.A. & L.R. Act or under the common civil law. The Act, 1927 cannot be extended to include within its ambit title dispute over the property which are excluded from the Act only because at a particular point of time a notification under Section 4 was issued qua the plots.

18. It may be clarified that inter se dispute of title claimed in respect of land which continues to be covered under notification under Section 4 can always be adjudicated by the Settlement Officer Consolidation and thereafter in appeal under Section 17. The judgment in the case of Hon'ble Supreme Court in the case of Mahendra Lal Jaini (supra) is applicable in such cases only.

19. In view of the aforesaid, this Court finds that it is not necessary to enter into the issues, as to whether a review application was maintainable or not or as to whether the first order of the Appellate Authority declaring one of the parties as Bhumidhar was legally justified or not, inasmuch as Bhumidhari rights in respect of a plot of land, which is excluded from the notification under Section 4 of the Act, 1927 vide an order under Section 11(2)(i), can only be agitated and examined by the competent revenue court under the U.P.Z.A. & L.R. Act or by the competent civil court, as the case may be.

20. Accordingly, this Court feels that setting aside of the order passed on review application, under challenge in the present writ petition, would have the effect of restoring another illegal order of the Appellate Authority declaring the petitioner as the Bhumidhar. Therefore, in the larger interest of justice it is provided as follows:

21. The petitioner and respondents are at liberty to get their rights declared over the plots by approaching the revenue court under the U.P.Z.A. & L.R. Act or the competent civil court, as they may be advised. Order passed under the Act by the Appellate Authority or for that purpose by the Forest Settlement Officer, insofar as it pertains to the inter se dispute of Bhumidhari rights over the plot in question, shall not be binding upon any of the parties.

22. Writ petition is disposed of subject to the observation made above.

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